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No.: ICC-01/12-01/18

Date: 18 April 2019

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Single Judge

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD***

Public Document

**Decision Rescheduling the Date of Filing of the Document Containing the Charges
and the Commencement of the Confirmation Hearing**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Mr Yasser Hassan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

Judge Péter Kovács, designated on 28 March 2018 by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”),¹ decides as follows.

I. Procedural History

1. On 27 March 2018, the Chamber, acting pursuant to article 58 of the Rome Statute (“Statute”), issued a warrant for the arrest of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court and is now held at its Detention Centre in The Hague.³
3. On 4 April 2018, Mr Al Hassan’s first appearance hearing was held and the Single Judge set the confirmation hearing to commence on Monday, 24 September 2018.⁴
4. On 16 May 2018, the Single Judge issued the “*Décision relative au système de divulgation et à d’autres questions connexes*” (“Decision on the Evidence Disclosure Protocol”),⁵ in which he directed submissions from the Prosecutor on a provisional schedule for the exchange of evidence, taking into account any need for translation or witness protection.
5. On 22 May 2018, the Chamber issued the “Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”.⁶

¹ “Decision Designating a Single Judge”, dated 28 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

² “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, dated 27 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

³ ICC-01/12-01/18-11-US-Exp.

⁴ Transcript of first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-Red-FRA.

⁵ [ICC-01/12-01/18-31](#).

⁶ ICC-01/12-01/18-35-Red2-tENG.

6. On 2 July 2018, in view of the specific circumstances of the case at bar and the difficulties stemming, in particular, from the challenging security situation in Mali, the Single Judge directed submissions from the parties on a possible postponement of the confirmation hearing.⁷

7. On 9 July 2018, the Defence⁸ and the Prosecutor⁹ filed their submissions on the date of the confirmation hearing (“Hearing”).

8. On 20 July 2018, the Single Judge issued his “Decision Postponing the Date of the Confirmation Hearing” (“Decision Postponing the Date of the Hearing”),¹⁰ setting the Hearing for 6 May 2019. In the decision, the Single Judge also instructed the Prosecutor to enter into the record, no later than 30 days before the date of the Hearing, the Arabic translation of the document containing the charges (“DCC”) and of the list of the evidence which the Prosecutor intends to present at the Hearing.¹¹

9. On 5 October 2018, the Chamber issued its “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges” (“Decision on the Date of Filing of the DCC”).¹² In the decision, the Chamber directed the Prosecutor to file the DCC and the list of evidence in the record no later than 60 days before the date of the Hearing,¹³ initially scheduled for 6 May 2019.

10. On 9 November 2018, the Prosecutor filed particulars of her fulfilment of her duties of disclosure and witness protection.¹⁴

⁷ “Decision Instructing Parties to File Observations on a Possible Postponement of the Confirmation of Charges Hearing”, ICC-01/12-01/18-64-tENG.

⁸ “Defence observations on postponing the date of the confirmation hearing”, ICC-01/12-01/18-74-Conf (“Defence Observations”). That day, the Defence filed a public redacted version of its observations, ICC-01/12-01/18-74-Red.

⁹ “*Observations du Bureau du Procureur sur la date de confirmation des charges*”, ICC-01/12-01/18-75-Conf-Exp (“Prosecutor’s Observations”). On 11 July 2018, the Prosecutor filed a public redacted version of her observations in the record, ICC-01/12-01/18-75-Red.

¹⁰ ICC-01/12-01/18-94-Red-tENG.

¹¹ Decision Postponing the Date of the Hearing, p. 14.

¹² ICC-01/12-01/18-143-tENG.

¹³ Decision on the Date of Filing of the DCC, para. 27 and p. 13.

¹⁴ ICC-01/12-01/18-180-Red2. On 16 November 2018, the confidential *ex parte* version was filed, see ICC-01/12-01/18-180-Conf-Exp. On 13 November 2018, the Prosecutor then filed a confidential

11. On 7 February 2019, the Single Judge directed specific submissions from the Prosecutor on the applications which she intended to file in relation to the proceedings before the start of the Hearing.¹⁵ The Prosecutor filed submissions on 12 February 2019 and requested more time in which to file the DCC.¹⁶ The Defence responded on 19 February 2019, objecting to the additional time requested and to the postponement of the Hearing.¹⁷

12. On 25 February 2019, the Single Judge issued the “*Ordonnance fixant une date butoir pour le dépôt des requêtes en vue du dépôt du document contenant les charges*” (“Order Setting a Deadline for Filing Applications”), in which he instructed the Prosecutor to file all of her applications for the purpose of filing the DCC by 15 March 2019, deferred the date of the Hearing and advised that the hearing would be rescheduled after 15 March 2019.¹⁸

13. On 4 March 2019, the Defence sought leave to appeal the Order Setting a Deadline for Filing Applications.¹⁹ On 8 March 2019, the Prosecutor filed her response.²⁰

redacted version, available to the Defence (ICC-01/12-01/18-180-Conf-Red) and a public redacted version (ICC-01/12-01/18-180-Red2) on 16 November 2018.

¹⁵ “Order Directing the Prosecutor to File Precise Submissions for Requests concerning the Proceedings which She Intends to File before the Start of the Confirmation of Charges Hearing”, ICC-01/12-01/18-236-tENG.

¹⁶ “*Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demande d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve*”, ICC-01/12-01/18-243-Secret-Exp (“Prosecutor’s Observations”). The Prosecutor filed a secret *ex parte* redacted version of her request, available to the Defence on 14 February 2019 (ICC-01/12-01/18-243-Secret-Exp-Red), and a public redacted version dated 15 February 2019 (ICC-01/12-01/18-243-Red2).

¹⁷ “Defence response to the Prosecution’s ‘*Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demandes d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve*’”, 19 February 2019, ICC-01/12-01/18-250-Secret-Exp (“Defence Response”). The Defence filed a public redacted version on 21 February 2019, ICC-01/12-01/18-250-Red.

¹⁸ ICC-01/12-01/18-255, para. 15.

¹⁹ ICC-01/12-01/18-261-Red.

²⁰ ICC-01/12-01/18-266-Conf-Exp, para. 1.

I. Applicable Law

14. The Single Judge notes articles 60(4), 61 and 67 of the Statute and rule 121 of the Rules of Procedure and Evidence (“Rules”).

II. The Single Judge’s determination

15. The Single Judge recalls that, under rule 121(7) of the Rules, the Pre-Trial Chamber may, at the request of the parties or on its own motion, decide to postpone the date of the Hearing. The Single Judge further recalls that, when considering a possible postponement of the Hearing, the Pre-Trial Chamber must ensure that “judicial proceedings are conducted in a fair and expeditious manner taking into consideration the competing interests at stake”.²¹ In making its decision, the Pre-Trial Chamber must also take account of the submissions of the parties and the circumstances particular to the case.²²

16. The Single Judge notes that on 20 July 2018, he rescheduled the Hearing for 6 May 2019,²³ in view of the applications submitted by the Prosecutor for the purpose of protecting the witnesses. The proceedings in the case *sub judice* have seen numerous applications from the Prosecutor for the leave of the Single Judge to withhold the identities of over 30 witnesses from the Defence. Consequently, for each of her applications to withhold a witness’s identity, the Prosecutor has been duty-bound to submit a sufficiently substantiated application, to which the Defence has responded. It then rested with the Single Judge, on the basis of arguments of the

²¹ Pre-Trial Chamber II, Case of *The Prosecutor v. Bosco Ntaganda*, “Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’ and Setting a New Calendar for the Disclosure of Evidence Between the Parties”, 17 June 2013, French version registered on 23 July 2013, ICC-01/04-02/06-73, para. 13 and reference cited; Case of *The Prosecutor v. Dominic Ongwen*, “Decision Postponing the Date of the Confirmation of Charges Hearing”, 6 March 2015, ICC-02/04-01/15-206 (“Decision of 6 March 2015”), para. 25.

²² “Decision of 6 March 2015”, para. 25. See also Chambers Practice Manual, May 2017, pp. 7-8: “Efforts should be made to reduce the average time that passes between the first appearance and the commencement of the confirmation of charges hearing. However, this depends on the circumstances of each particular case.”

²³ See Decision Postponing the Date of the Hearing.

parties, to verify all of the proposed redactions put before him, some of which concerned particularly long documents.

17. On 12 February 2019, as instructed by the Single Judge, the Prosecutor informed him that she still had several applications to file, and so he had to set a deadline, 15 March 2019, for filing final procedural applications.²⁴ The Single Judge notes that, by then, the parties had already made their arguments on a possible postponement of the date of filing of the DCC and, hence, the date of the Hearing.²⁵ The arguments were summarized in the Order Setting a Deadline for Filing Applications.²⁶ At this advanced stage of the proceedings, the Single Judge does not see fit to seek further arguments, as to do so would, in addition, delay the proceedings further. In any event, in his Order Setting a Deadline for Filing Applications, the Single Judge had already ruled on the merit of postponing the filing of the DCC²⁷ and, hence, the Hearing, having given consideration to all of the arguments presented by the parties. The Single Judge further notes that the postponement in question is a necessary adjustment, warranted by the fact that it is at times difficult to foresee the exact time needed for procedural matters which span several months.

18. In the circumstances and considering the time needed by the Prosecutor to update her DCC in accordance with the latest decisions of the Single Judge on her

²⁴ See Order Setting a Deadline for Filing Applications.

²⁵ See “*Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demande d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve*”, 12 February 2019, ICC-01/12-01/18-243-Secret-Exp. On 15 February 2019, the Prosecutor filed a public redacted version of the document, ICC-01/12-01/18-243-Red2. See also “*Defence response to the Prosecution’s ‘Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demandes d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve’*”, 19 February 2019, ICC-01/12-01/18-250-Secret-Exp (“Defence Response”). The Defence filed a public redacted version on 21 February 2019, ICC-01/12-01/18-250-Red.

²⁶ Order Setting a Deadline for Filing Applications, paras. 9-13.

²⁷ See Order Setting a Deadline for Filing Applications, para. 16 (“[TRANSLATION] Considering the circumstances particular to the current proceedings and, specifically, the large number of applications to protect witnesses and victims which have been and remain to be filed, and considering, moreover, that the additional time requested by the Prosecutor does not appear to be unreasonable in that regard, the Single Judge authorizes the Prosecutor to comply with her procedural requirements regarding witness and victim protection *before* she files her DCC, so that the evidence relating to them can be included in it.”).

applications, the Single Judge sets the date of filing of the DCC for Wednesday, 8 May 2019.

19. The Single Judge recalls that in its Decision on the Date of Filing of the DCC, the Chamber directed the Prosecutor to file in the record the DCC, in French, and the list of evidence, no later than 60 days before the date of Hearing.²⁸

20. The commencement of the Hearing is, therefore, postponed to Monday, 8 July 2019.

²⁸ "Decision on the Date of Filing of the DCC", para. 27 and p. 13.

FOR THESE REASONS, the Single Judge

ORDERS the Prosecutor to file the DCC and the list of evidence by Wednesday, 8 May 2019;

ORDERS the Prosecutor to file an Arabic version of the DCC and the list of evidence by Friday, 7 June 2019;

DECIDES that the commencement of the Hearing shall be postponed to Monday, 8 July 2019.

Done in both English and French, the French version being authoritative.

[signed]

Judge Péter Kovács

Single Judge

Dated this 18 April 2019

At The Hague, Netherlands